

Jonathan Evans (Cal. Bar #247376)
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway
Suite 800
Oakland, CA 94612
Phone: 510-844-7100 x318
Fax: 510-844-7150
email: jevans@biologicaldiversity.org

Attorney for Plaintiffs Center for Biological Diversity
and Center for Environmental Health

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL DIVERSITY and
CENTER FOR ENVIRONMENTAL HEALTH

Plaintiffs,

v.

GINA MCCARTY,
in her official capacity as
Administrator of the United States
Environmental Protection Agency,

Defendant.

Civ. No.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

(Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)

INTRODUCTION

1
2 1. Particulate matter less than 2.5 microns in diameter (PM2.5), sometimes referred to as
3 fine particulate, is a major cause of serious adverse public health and welfare impacts in the
4 United States. Exposure to PM2.5 causes the death of innocent people, as well as numerous
5 respiratory problems, including decreased lung function, asthma and bronchitis, and is also
6 associated with hospital admissions, cardiopulmonary disease and lung cancer. The detrimental
7 effects of PM2.5 are not limited to human health; PM2.5 also contributes to regional haze,
8 thereby contributing to the visibility range limitations in some of our Nation’s most treasured
9 natural areas.
10

11
12 2. To better protect the public from the damage caused by PM2.5, the United States
13 Environmental Protection Agency (EPA) promulgated a revised PM2.5 National Ambient Air
14 Quality Standard (NAAQS) in 2006 and again in 2012. The promulgation of revised PM2.5
15 NAAQS creates various mandatory duties which EPA must perform in order to effectively
16 implement those PM2.5 NAAQS. As detailed below, EPA is in violation of numerous Clean Air
17 Act mandatory duties with regard to the PM2.5 NAAQS.
18

19 3. Accordingly, Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and CENTER FOR
20 ENVIRONMENTAL HEALTH bring this action against Defendant GINA MCCARTHY, in her
21 official capacity as EPA Administrator, to compel her to perform her mandatory duties with
22 respect to the PM2.5 NAAQS.
23

JURISDICTION

24
25 4. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this
26 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)
27 (Clean Air Act citizen suits).
28

1 5. An actual controversy exists between the parties. This case does not concern federal
2 taxes, is not a proceeding under 11 U.S.C. §§ 505 of 1146, and does not involve the Tariff Act of
3 1930. Thus, this Court has jurisdiction to order declaratory relief under 28 U.S.C. § 2201. If the
4 Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.
5

6 **NOTICE**

7 6. Plaintiffs mailed to EPA by certified mail, return receipt requested, two written notices of
8 intent to sue regarding the violations alleged in this Complaint. EPA received the notice letters
9 by no later than July 18, 2016. More than sixty days have passed since EPA received these
10 notice letters. EPA has not remedied the violations alleged in this Complaint. Therefore, a
11 present and actual controversy exists between the parties.
12

13 **VENUE**

14 7. Defendant EPA resides in this judicial district. This civil action is brought against an
15 officer of the United States acting in her official capacity and a substantial part of the events or
16 omissions giving rise to the claims in this case occurred in the Northern District of California.
17 One of the claims in this Complaint concerns EPA's failure to perform mandatory duties with
18 regard to California and Nevada. EPA Region 9, which is responsible for California and
19 Nevada, is headquartered in San Francisco. Thus several of the events and omissions at issue in
20 this action occurred at EPA's Region 9 headquarters in San Francisco. In addition, Plaintiff
21 Center for Environmental Health is headquartered in Oakland and Plaintiff Center for Biological
22 Diversity is incorporated in California with its main California office in Oakland. Accordingly,
23 venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).
24
25

26 **INTRADISTRICT ASSIGNMENT**

27 8. A substantial part of the events and omissions giving rise to the claims in this case
28

1 occurred in the County of San Francisco. Accordingly, assignment to the San Francisco Division
2 or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

3
4 **PARTIES**

5 9. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
6 corporation incorporated in California. The Center for Biological Diversity has approximately
7 50,000 members throughout the United States and the world. The Center for Biological
8 Diversity's mission is to ensure the preservation, protection, and restoration of biodiversity,
9 native species, ecosystems, public lands and waters, and public health through science, policy,
10 and environmental law. Based on the understanding that the health and vigor of human societies
11 and the integrity and wildness of the natural environment are closely linked, the Center for
12 Biological Diversity is working to secure a future for animals and plants hovering on the brink of
13 extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

14
15 10. The Center for Biological Diversity and its members include individuals with varying
16 interests in wildlife species and their habitat ranging from scientific, professional, and
17 educational to recreational, aesthetic, moral, and spiritual. Further, the Center for Biological
18 Diversity's members enjoy, on an ongoing basis, the biological, scientific, research, educational,
19 conservation, recreational, and aesthetic values of the regions inhabited by these species,
20 including the regions at issue in this action. The Center for Biological Diversity's members
21 observe and study native species and their habitat, and derive professional, scientific,
22 educational, recreational, aesthetic, inspirational, and other benefits from these activities and
23 have an interest in preserving the possibility of such activities in the future. The Center for
24 Biological Diversity and its members have participated in efforts to protect and preserve natural
25 areas, including the habitat essential to the continued survival of native species, and to address
26
27
28

1 threats to the continued existence of these species, including the threats posed by air pollution
2 and other contaminants.

3 11. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is an Oakland, California
4 based nonprofit organization that helps protect the public from toxic chemicals and promotes
5 business products and practices that are safe for public health and the environment. The Center
6 for Environmental Health works in pursuit of a world in which all people live, work, learn, and
7 play in healthy environments.
8

9 12. Plaintiffs' members live, work, recreate, travel and engage in other activities throughout
10 the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the
11 affected areas threatens and damages, and will continue to threaten and damage, the health and
12 welfare of Plaintiffs' members as well as their ability to engage in and enjoy their other
13 activities. Pollution diminishes Plaintiff's members' ability to enjoy the aesthetic qualities and
14 recreational opportunities of the affected area.
15

16 13. EPA's failure to timely perform the mandatory duties described herein also adversely
17 affects Plaintiffs, as well as their members, by depriving them of procedural protection and
18 opportunities, as well as information that they are entitled to under the Clean Air Act. The
19 failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiffs' members
20 as to whether they are exposed to excess air pollution.
21

22 14. The above injuries will continue until the Court grants the relief requested herein.
23

24 15. Defendant GINA MCCARTHY is the Administrator of the United States Environmental
25 Protection Agency. In that role Administrator McCarthy has been charged by Congress with the
26 duty to administer the Clean Air Act, including the mandatory duties at issue in this case.
27

28 ///

LEGAL BACKGROUND AND FACTS

1
2 16. Congress enacted the Clean Air Act to “speed up, expand, and intensify the war against
3 air pollution in the United States with a view to assuring that the air we breathe throughout the
4 Nation is wholesome once again.” H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.Code
5 Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National
6 Ambient Air Quality Standards for certain pollutants, including PM2.5. National Ambient Air
7 Quality Standards establish maximum allowable concentrations in the air of these pollutants.
8

9 17. Each National Ambient Air Quality Standard must be stringent enough to protect public
10 health and welfare. Effects on welfare include, but are not limited to, effects on soils, water,
11 vegetation, manmade materials, wildlife, visibility (*i.e.*, haze), climate, damage to property,
12 economic impacts and effects on personal comfort and well-being.
13

14 18. On October 20, 2010, EPA published the final rule on the “Prevention of Significant
15 Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM2.5)—Increments,
16 Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” 75 Fed.
17 Reg. 64,864(Oct. 20, 2010)(2010 NSR Rule). This rule established several components for
18 making PSD permitting determinations for PM2.5, including a system of “increments” which is
19 a site specific ambient air quality standard used to prevent significant deterioration of ambient air
20 quality for a pollutant.
21

22 19. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are
23 included in the table below.
24

25 ///

26 ///

27 ///

28 ///

PM2.5 INCREMENTS ESTABLISHED BY THE 2010 NSR RULE
 IN MICROGRAMS PER CUBIC METER

	<u>Annual</u>	<u>24-hour max</u>
Class I	1	2
Class II	4	9
Class III	8	18

20. EPA required that states submit a SIP amendment including these PM2.5 increments by July 20, 2012. 75 Fed. Reg. at 64,898. *See also* 40 C.F.R. § 51.166(a)(6)(i).

21. The Clean Air Act requires EPA to determine whether any state implementation plan submittal is administratively complete. *See* 42 U.S.C. 7410(k)(1)(B). If a state fails to submit any required state implementation plan, there is no submittal that may be deemed administratively complete and EPA must make a determination stating that the state failed to submit the required state implementation plan. 42 U.S.C. § 7410(k)(1)(B). This is referred to as a “finding of failure to submit.”

22. If a state does submit a SIP submittal, EPA has a mandatory duty to take final action on the submittal by approving it, disapproving it or approving it in part and disapproving it in part within 12 months of when the submittal is deemed administratively complete. 42 U.S.C. § 7410(k)(2) – (4).

23. If EPA disapproves a SIP submittal EPA has a mandatory duty to promulgate a Federal Implementation Plan (FIP) no later than two years after disapproving a SIP submittal. 42 U.S.C. § 7410(c)(1).

24. Moderate 2006 PM2.5 nonattainment areas have an attainment date of December 31, 2015. Therefore, EPA has a mandatory duty to determine if they attained by their attainment date and publish notice of such a finding by no later than June 30, 2016. 42 U.S.C. §§

1 7509(c)(2), 7513(b)(2).

2 **CLAIMS FOR RELIEF**

3 **CLAIM ONE**

4 **(Failure to issue findings of failure to submit for PM2.5 increment)**

5 25. Plaintiff incorporates by reference all paragraphs listed above.

6 26. Pursuant to the Clean Air Act, each state must submit a SIP amendment including PM2.5
7 increments by July 20, 2012. 75 Fed. Reg. at 64,898. *See also* 40 C.F.R. § 51.166(a)(6)(i).

8 27. The Clean Air Act requires EPA to determine whether a state implementation plan
9 submittal is administratively complete. *See* 42 U.S.C. 7410(k)(1)(B).

10 28. If a state fails to submit any required state implementation plan, there is no submittal that
11 may be deemed administratively complete and EPA must make a determination stating that the
12 state failed to submit the required state implementation plan. *See* 42 U.S.C. § 7410(k)(1)(B).

13 This is referred to as a “finding of failure to submit.”

14 29. Thus, if a state does not submit a state implementation plan, a finding of failure to submit
15 must be made no later than six months after the date by which the state implementation plan
16 submittal was due. *See* 42 U.S.C. § 7410(k)(1)(B).

17 30. The following states have not submitted plan amendments to add PM2.5 increment to
18 their PSD programs:

19 Maricopa, AZ Local Air Agency

20 Pima, AZ Local Air Agency

21 Louisville Metro Air Pollution Control District (LMAPCD) Jefferson County, KY

22 31. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
23 finding of failure to submit for the states listed above regarding the PM2.5 increment by no later
24

1 than January 20, 2013.

2 32. EPA has failed, and continues to fail, to make these findings of failure to submit for the
3 states listed above.

4 33. Accordingly, EPA is violation of its mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to
5 issue a finding of failure to submit sufficient PM2.5 increment state implementation plans
6 amendments.
7

8 **CLAIM TWO**

9 **(Failure to take final action on PM2.5 SIP submittals)**

10 34. Plaintiffs incorporate by reference all paragraphs listed above.

11 35. The Clean Air Act also requires that if, six months after a state submits a SIP submittal,
12 EPA has not made the completeness finding and has not found the submittal to be incomplete,
13 the submittal is deemed administratively complete by operation of law. 42 U.S.C. §
14 7410(k)(1)(B). EPA must take final action on an administratively complete submittal by
15 approving in full, disapproving in full, or approving in part and disapproving in part within 12
16 months of the completeness finding. 42 U.S.C. § 7410(k)(2) - (4).
17

18 36. The North Sonoma County Air Pollution Control District in California had Rules 130,
19 200, 220, 230, 240 submitted on December 11, 2014. *See* 81 Fed. Reg. 31,567 (May 19, 2016).
20 That submittal was administratively complete by no later than June 11, 2015. 42 U.S.C. §
21 7410(k)(1)(B). Therefore, EPA has a mandatory duty to take final action on this submittal by no
22 later than June 11, 2016. 42 U.S.C. § 7410(k)(2) - (4). EPA has failed to perform this
23 mandatory duty.
24

25 37. Oklahoma submitted a SIP submittal to address PM2.5 increments on February 6, 2012.
26 *See* 81 Fed. Reg. 42,587 (June 30, 2016) (“Revisions to OAC 252:100–3–4 effective June 15,
27 2005 and July 1, 2011, to maintain consistency with federal requirements and adopt and
28 Complaint for Declaratory and Injunctive Relief

1 implement the PSD PM2.5 increments promulgated by the EPA on October 20, 2010.”). This
2 submittal was deemed complete by no later than August 6, 2012. 42 U.S.C. § 7410(k)(1)(B).
3 Thus, EPA has a mandatory duty to take final action on this submittal by no later than August 6,
4 2013. 42 U.S.C. § 7410(k)(2) - (4). EPA has failed to perform this mandatory duty.

5
6 38. Imperial County, California had a SIP submittal submitted to address the PM2.5
7 nonattainment SIP elements of attainment demonstration, contingency measures, emission
8 inventory, PM2.5 RACM/RACT (Subpart 4), and PM2.5 reasonable further progress (RFP).

9 This submittal was deemed complete by no later than July 9, 2015. Thus, EPA has a mandatory
10 duty to take final action on this submittal by no later than July 9, 2016. 42 U.S.C. § 7410(k)(2) -
11 (4). EPA has failed to perform this mandatory duty.

12
13 39. Imperial County, California had a SIP submittal submitted to address the PM2.5
14 nonattainment new source review (NSR). This submittal was deemed complete by no later than
15 March 7, 2014. Thus, EPA has a mandatory duty to take final action on this submittal by no later
16 than March 7, 2015. 42 U.S.C. § 7410(k)(2) - (4). EPA has failed to perform this mandatory
17 duty.
18

19 CLAIM THREE

20 (Failure to issue findings of failure to submit 21 for 2012 PM2.5 NAAQS Good Neighbor provision)

22 40. Plaintiffs incorporate by reference all paragraphs listed above.

23 41. On December 14, 2012, the then EPA Administrator Lisa Jackson signed a new annual
24 PM2.5 NAAQS of 12 ug/m3. 78 Fed. Reg. 3,086, 3,276 (Jan. 15, 2013). The promulgation of
25 the 2012 PM2.5 NAAQS created a requirement that states submit an Infrastructure SIP for the
26 2012 PM2.5 NAAQS within three years, that is by December 14, 2015. *See* 42 U.S.C. §
27 7410(a)(1).
28

1 42. EPA has a mandatory duty to make a finding of failure to submit for 2012 PM_{2.5}
 2 NAAQS Infrastructure SIP Good Neighbor provisions, that is 42 U.S.C. §
 3 7410(a)(2)(D)(i)(Prongs 1-4), by no later than six months after the deadline for state SIP
 4 submittals, that is June 14, 2016. EPA has failed to make findings of failure to submit for the
 5 following states and following prongs of the 2012 PM_{2.5} NAAQS Infrastructure SIP Good
 6 Neighbor provision.
 7

STATE	PRONGS OF GOOD NEIGHBOR PROVISION
Arkansas	Prongs 1 - 4
Iowa	Prongs 1 - 4
Illinois	Prongs 1 - 4
Indiana	Prongs 1 - 4
Massachusetts	Prongs 1 - 4
Maryland	Prongs 1 - 4
Maine	Prongs 1 - 4
Michigan	Prongs 1 - 4
Minnesota	Prongs 1- 3 only
Missouri	Prongs 1 - 4
New York	Prongs 1 - 4
Ohio	Prongs 1 – 2, 4
Oklahoma	Prongs 1 & 2 only
Pennsylvania	Prongs 1 & 2 only
Rhode Island	Prongs 1 - 4
Virginia	Prongs 1 & 2 only
Washington	Prongs 1 & 2 only
Wisconsin	Prongs 1 - 4

CLAIM FOUR

(Failure to take final action on 2012 PM2.5 NAAQS Good Neighbor provision submittal)

43. Plaintiffs incorporate by reference all paragraphs listed above.

44. As explained above, EPA has a mandatory duty to take final action on an administratively complete SIP submittal within one year of the SIP submittal being deemed complete. 42 U.S.C. § 7410(k)(2) - (4).

45. New Jersey submitted its 2012 PM2.5 Infrastructure SIP Good Neighbor provision, prongs 1 – 4 by no later than October 17, 2014. EPA deemed this submittal administratively complete no later than October 28, 2014. Thus, EPA has a mandatory duty to take final action on this submittal by no later than October 28, 2015.

46. EPA has failed to perform this mandatory duty.

CLAIM FIVE

(Failure to bump up 2006 PM2.5 NAAQS nonattainment areas)

47. Plaintiffs incorporate by reference all paragraphs listed above.

48. Moderate 2006 PM2.5 nonattainment areas have an attainment date of December 31, 2015. Therefore, EPA has a mandatory duty to determine if they attained by their attainment date and publish notice of such a finding by no later than June 30, 2016. 42 U.S.C. §§ 7509(c)(2), 7513(b)(2).

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1 49. EPA has failed to perform this mandatory duty for the following 2006 PM2.5
2 nonattainment areas:

3 Nogales, AZ,
4 West Central Pinal, AZ,
5 Chico, CA,
6 Imperial, CA,
7 Sacramento, CA,
8 San Francisco Bay Area, CA
9 Logan, UT-Idaho,
10 Liberty-Clairton, PA,
11 Knoxville-Sevierville-La Follette, TN,
12 Logan, UT,
13 Provo, UT,
14 Salt Lake City, UT
15

16 **CLAIM SIX**

17 **(Failure to issue 1997 and 2006 PM2.5 Infrastructure FIP for Wyoming)**

18 50. Plaintiffs incorporate by reference all paragraphs listed above.

19 51. EPA has a mandatory duty to promulgate a Federal Implementation Plan (FIP) no later
20 than two years after disapproving a SIP submittal. 42 U.S.C. § 7410(c)(1).
21

22 52. EPA disapproved section 110(a)(2)(E)(ii) infrastructure element, related to CAA section
23 128 (State Boards), for the 1997 and 2006 PM2.5 NAAQS for Wyoming. *See* 78 Fed. Reg.
24 73,445, 73,447 (Dec. 6, 2013). This rule was effective January 6, 2014.

25 53. Thus, EPA's FIP was due no later than January 6, 2016.

26 54. EPA has not promulgated a FIP and thus is in violation of its mandatory duty.
27
28

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that the Administrator is in violation of the Clean Air Act with regard to her failure to perform each mandatory duty listed above;
- B. Issue a mandatory injunction requiring the Administrator to perform her mandatory duties by certain dates;
- C. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's order;
- D. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert fees; and
- E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/Jonathan Evans

Jonathan Evans (Cal. Bar #247376)
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway
Suite 800
Oakland, CA 94612
Phone: 510-844-7100 x318
Fax: 510-844-7150
email: jevans@biologicaldiversity.org

Attorney for Plaintiffs Center for Biological
Diversity and Center for Environmental Health

Dated: September 27, 2016

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Center for Biological Diversity and Center for Environmental Health

(b) County of Residence of First Listed Plaintiff Alameda, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Center for Biological Diversity 1212 Broadway, Suite 800 Oakland, CA. 94612 (510) 844-7118

DEFENDANTS

U.S Environmental Protection Agency, GINA MCCARTHY, Administrator

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business in This State, Incorporated and Principal Place of Business in Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. §§ 7401 et seq. (Clean Air Act). Brief description of cause: Failure to perform mandatory duties pursuant to the Clean Air Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE: 9/27/2016

SIGNATURE OF ATTORNEY OF RECORD: /s/ Jonathan Evans

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.